

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE FOR THE TWENTIETH
JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,
Plaintiff,

v.

FIRST NORTH AMERICAN NATIONAL
BANK a foreign corporation,

Defendant.

COMPLAINT

This civil action is brought in the name of the State of Tennessee, by and through John Knox Walkup, Attorney General and Reporter ("Attorney General"), pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114, at the request of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance (the "Division"), having reason to believe that the Defendant named herein has violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101 *et seq.*, and that this action is in the public interest.

I. JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to the provisions of Tenn. Code Ann. § 47-18-108. Venue is proper in Davidson County, pursuant to the provisions of Tenn. Code Ann. § 47-18-108(a)(3), because it is a county in which Defendant has conducted business. (An Affidavit and Verification of Mark Williams, Director, Division of Consumer Affairs, Department of Commerce and Insurance, is attached hereto as Exhibit A.)

II. PARTIES

2. Pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114, this action is commenced in the name of the State of Tennessee, by John Knox Walkup, the Attorney General and Reporter, on behalf of and at the request of the Division of Consumer Affairs. (See Exhibit A.)

3. Upon information and belief, the Defendant First North American National Bank, is a foreign corporation, is not presently registered to do business in the State of Tennessee and does not have a registered agent for service of process. First North American National Bank is a creditor, holder and/or servicer of credit accounts.

III. FACTUAL ALLEGATIONS

Upon information and belief, the State alleges as follows:

5. Defendant First North American National Bank ("Defendant") conducts business in Tennessee as a creditor, holder and/or servicer of credit accounts in connection with the extension of open-end credit under various plans to finance the purchase of goods and services from Circuit City Stores, Inc. by consumers in Tennessee.

6. Many consumers who purchased goods from retailer Circuit City Stores, Inc. in Tennessee under credit plans for which Defendant acts as creditor, holder or servicer have been unable to pay their debts to creditors generally, including debts to Defendant, and have sought protection by filing for bankruptcy in federal bankruptcy court.

7. In an effort to continue collections on credit card debt incurred by consumers who have declared bankruptcy, Defendant has solicited and induced such debtors to reaffirm credit card debt that would otherwise be discharged through bankruptcy.

8. Upon obtaining the consumers' agreement to reaffirm debt to Defendant, Defendant unlawfully failed to file, or ensure the filing of, many reaffirmation agreements and/or unlawfully failed to obtain the approval of the bankruptcy court prior to continuing collection of debt reaffirmed by consumers.

9. After obtaining the reaffirmation agreements and failing to file such agreements with the bankruptcy court, Defendant represented or continued to represent, directly or by implication, that the reaffirmation agreements were enforceable, including under rights and remedies contained in the consumers' credit card agreement. Defendant continued to demand payments from consumers in connection with reaffirmation agreements not filed with the bankruptcy court, and, in many instances, charged these consumers interest, late fees, and penalties during the collection processes, and/or caused inaccurate and damaging entries to be made on credit reports of consumers who failed to pay the debt covered by the invalid reaffirmation agreements.

10. Defendant undertook these practices despite its knowledge that the post-bankruptcy collection of their credit card debts under these circumstances is unlawful.

11. Plaintiff submits that approximately 468 Tennessee consumers may have been affected by Defendant's practices described herein.

12. The Attorney General files this Complaint alleging facts solely relating to consumers whose reaffirmation agreements were not filed in the appropriate bankruptcy court by First North American National Bank.

13. The activities alleged herein constitute violations of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101 *et seq.*

14. Plaintiff is entitled to a permanent injunction by this Court against Defendant pursuant to § 47-18-108.

IV. CAUSE OF ACTION

15. The Attorney General re-alleges all preceding paragraphs of this Complaint, and incorporates them herein. 16. Defendant has violated the Tennessee Consumer Protection Act of 1977, §§ 47-18-101 *et seq.* by engaging in various unfair, or deceptive acts or practices, including, but not limited to:

a)soliciting or inducing consumers to reaffirm debts in violation of Bankruptcy Code requirements for reaffirmation agreements;

b)failing to file, or failing to ensure the filing of, reaffirmation agreements with the bankruptcy court as required by law;

c)misrepresenting to debtors directly or by implication that they are legally responsible to repay debts that have been reaffirmed in an improper manner;

d)collecting or attempting to collect from consumers debts that have been discharged in bankruptcy; and

e)continuing to charge additional interest and finance charges on consumers' debts that Defendant knew or should have known had been discharged in Bankruptcy.

V. VIOLATIONS OF THE LAW

17. Defendant's activities in obtaining non-filed reaffirmation agreements from consumers relating to debts incurred by purchasing goods or services from the Defendant in this State constitute "trade" or "commerce" and the offering of or providing of "goods" as defined in Tenn. Code Ann. § 47-18-103(5) and (9).

18. Consumers who enter into non-filed reaffirmation agreements are "consumers" as defined in Tenn. Code Ann. § 47-18-103(2) which provides that:

"consumer" means any natural person who seeks or acquires by purchase, rent, lease, assignment, award by chance, or other disposition, any goods, services, or property, tangible or intangible, real, person or mixed, and any other article, commodity, or thing of value wherever situated...

19. All of the acts and practices engaged in and employed by the Defendant as alleged herein are "unfair or deceptive acts or practices affecting the conduct of any trade or commerce" in Tennessee, which are declared unlawful by Tenn. Code Ann. § 47-18-104(a).

20. Each and every violation alleged herein engaged in by the Defendant as recited above constitutes a separate violation of the Tennessee Consumer Protection Act and each is punishable by a civil penalty of not more than One Thousand Dollars (\$1,000.00) as provided by Tenn. Code Ann. § 47-18-108(b).

21. The Defendant's conduct violates the stated purposes of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-102, which provides, in pertinent part: The provisions of this part shall be liberally construed to promote the following practices:

(2) To protect consumers and legitimate business enterprises from those who engage in unfair or deceptive acts or practices in the conduct of any trade or commerce in part or wholly within this state;

(3) To encourage and promote the development of fair consumer practices;

(4) To declare and to provide for civil legal means for maintaining ethical standards of dealing between persons engaged in business and the consumer public to the end that good faith dealings between buyers and sellers at all levels of commerce be had in this state....

22. Further, the Defendant has violated Tenn. Code Ann. § 47-18-104(b)(27), which prohibits engaging in any act or practice which is deceptive to the consumer or any other person. The Defendant's conduct which violates this part includes, but is not limited to: a)soliciting or inducing consumers to reaffirm debts in violation of Bankruptcy Code requirements for reaffirmation agreements; b)failing to file, or failing to ensure the filing of, reaffirmation agreements with the bankruptcy court as required by law; c)misrepresenting to debtors directly or by implication that they are legally responsible to repay debts that have been reaffirmed in an improper manner; d)collecting or attempting to collect from consumers debts that have been discharged in bankruptcy; and e)continuing to charge additional interest and finance charges on consumers' debts that Defendant knew or should have known had been discharged in bankruptcy.

23. By representing that non-filed reaffirmation agreements are enforceable or valid, when such

agreements are unlawful, the Defendant has, directly or indirectly, represented that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law, in violation of Tenn. Code Ann. § 47-18-104(b)(12).

24. As a result of the various violations of the Act as alleged herein, consumers and/or persons, the exact number of whom is presently unknown to the State, may have and/or have suffered ascertainable losses of money.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, THE STATE OF TENNESSEE PRAYS:

(1) That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101, 47-18-108 and 47-18-116.

(2) That process issue and be served upon Defendant pursuant to Tenn. Code Ann. § 20-2-201, requiring it to appear and answer this Complaint.

(3) That this Honorable Court adjudge and decree that Defendant has engaged in acts or practices in violation of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§47-18-101 *et seq.*, as previously set forth.

(4) That this Court permanently enjoin and restrain the Defendant from, directly or indirectly, engaging in deceptive and unfair practices set forth herein and from violating the Tennessee Consumer Protection Act of 1977.

(5) That this Court make such orders or render such judgments as may be necessary to restore to any consumer or other person any ascertainable losses (including statutory interest) suffered by reasons of the alleged violations of the Tennessee Consumer Protection Act.

(6) That this Court adjudge and decree that the Defendant is liable to the State for the reasonable costs and expenses of the investigation and prosecution of the Defendant's actions, including attorneys' fees, and investigative costs as is provided by Tenn. Code Ann. § 47-18-108(b).

(7) That the Court adjudge and decree that the Defendant pay civil penalties of not more than One Thousand Dollars (\$1,000.00) per violation to the State as provided by Tenn. Code Ann. § 47-18-108(b).

(8) That all costs in this cause be taxed against Defendant.

(9) That this Court grant Plaintiff such other and further relief as this Court deems just and proper.

